

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Date:
November 25, 2013

LEGEND

X =

Y =

A =

B =

Trust =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Year =

State =

Dear _____ :

This responds to a letter dated June 12, 2013, submitted on behalf of X by X's authorized representative, requesting relief under section 1362(f) of the Internal Revenue Code.

FACTS

According to the information submitted, X is a successor corporation of Y. Y made an election to be treated as an S corporation in Year. On Date1, Y performed a reorganization whereby it was reorganized as X, a general partnership under the laws of State. X continued the S election of Y with an effective date of Date2.

On Date3, A, a shareholder of X, died. Pursuant to A's will, A's X shares were transferred to Trust on Date4. Trust was an ineligible shareholder of X, causing X's S election to terminate on Date4.

As of Date4, X represents that Trust was intended to be treated as a qualified subchapter S trust (QSST). X represents that the terms of Trust did not meet the requirements to be treated as a QSST and that the Executor of the estate was instructed to hold the X shares until a Court Order amending the terms of Trust was received. X assumed the Executor would follow these instructions. The Executor, however, transferred the X shares to Trust on Date4, therefore causing X's S corporation election to terminate as of Date4. A Court Order amending the terms of Trust was granted on Date5.

X represents that the circumstances surrounding the termination of X's S election, and the failure to qualify as a QSST on the date the X shares were transferred to Trust, were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and its shareholders represent that X has consistently been treated as an S corporation. X, its shareholders, and B, represent that Trust has been consistently treated as a QSST. Further, X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) of the Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100

shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(i) provides that for purposes of § 1361(b)(1)(B), a trust all of which is treated (under subpart E) as owned by an individual who is a citizen or resident of the United States may be a shareholder of an S corporation.

Section 1361(c)(2)(A)(iii) provides that a trust may be an S corporation shareholder with respect to stock transferred to it pursuant to a will, but only for the 2-year period beginning on the day on which such stock is transferred to it.

Section 1361(d)(1) provides that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2) the trust is treated as a trust described in § 1361(c)(2)(A)(i) and, for purposes of § 678(a), the beneficiary of the trust is treated as the owner of that portion of the trust which consists of stock in a S corporation with respect to which the election under § 1361(d)(2) is made.

Section 1361(d)(3) provides that the term “qualified subchapter S trust” means a trust (A) the terms of which require that (i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust, (ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary, (iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary’s death or the termination of the trust, and (iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and (B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States. A substantially separate and independent share of a trust within the meaning of 663(c) shall be treated as a separate trust for purposes of this subsection and subsection (c).

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3) or § 1361(b)(3)(C); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date4. We further conclude that the termination of X's S election on Date4 was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation as of Date4 and thereafter, provided that B files a QSST election for Trust with an effective date of Date4 with the appropriate service center within 120 days from the date of this letter, and X's S corporation election is not otherwise terminated under § 1362(d). A copy of this letter must be attached to the QSST election.

Except as specifically ruled upon above, we express or imply no opinion concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes

cc: